

**REQUEST FOR REVIEW  
before the  
FEDERAL COMMUNICATIONS COMMISSION**

CC Docket No. 02-6

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**Re: Applicant Name:** LOWER YUKON  
SCHOOL DISTRICT  
**Billed Entity No.:** 145592  
**Funding Year 2004:** 07/01/2004-06/30/2005  
**Form 471 Application Nos.:** 416962, 417124, 417177,  
417226, 418655

**I. INTRODUCTION**

Pursuant to 47 C.F.R. § 54.719(c), the Lower Yukon School District ("the District") seeks FCC review of the Universal Service Administrative Company, Schools & Libraries Division ("SLD") Administrator's Decisions on Appeal – Funding Year 2004-2005.<sup>1</sup> This request is based on SLD's decision to deny all of the District's FY 2004-05 funding requests, as represented in the five Forms 471 identified above. SLD's denial of funding was based on the District's alleged failure to demonstrate compliance with the Forms 471 Item 25 certification. Specifically, SLD found that the District had not demonstrated that at the time the Forms 471 were filed, the District had secure funds available to cover the non-discounted portion of the funding requests.

Several significant errors by SLD, in violation of decisions by this Commission, require remand so that the District's complete funding sources may be appropriately

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<sup>1</sup> Exhibit A.

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considered and E-rate funding reinstated. SLD's decision to deny funding lacked detail and provided no specificity as to why the District had not met its certification obligation. SLD failed to permit the District an opportunity to cure any budget shortcomings and to demonstrate security of funding, in violation of FCC precedent and SLD practice. Finally, SLD erroneously failed to consider clarifying evidence presented by the District in its appeal, evidence which SLD has previously held sufficient to demonstrate adequacy of secure funding for purposes of the Item 25 certification.

For each and all of these reasons, SLD's decision to deny funding must be reversed and the matter remanded with direction that SLD consider all relevant evidence and permit the District an opportunity to demonstrate that it has secure access to funds sufficient to meet its non-discounted E-rate obligations.

## II. FUNDING DENIAL AND REASONS THEREFORE

The five Funding Commitment Reports that give rise to this appeal, issued for each of the five Form 471 applications, contain identical reasons for the funding decisions. The complete explanation for the denial of funding provides:

During application review, you were asked to demonstrate that when you filed your Form 471 you had secured access to the funds needed to pay your portion of the charges, and you were unable to do so.<sup>2</sup>

The District received a separate letter from SLD dated April 19, 2005, regarding the denial of funding.<sup>3</sup> This letter explained that its purpose "is to provide you with

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<sup>2</sup> Exhibit B at pp. 5, 11, 17, 23 and 29, respectively.

<sup>3</sup> Exhibit C.

additional information concerning the certification you made in Item 25 of FCC Form(s) 471, Service Ordered and Certification Form.” While identifying its purpose as providing further information, the letter, in fact, provided little in the way of offering an explanation behind the funding denial, explaining only:

This determination was made after careful review of the information that you provided to the fund administrator. After our thorough review of all of the information that you presented to us regarding the resources necessary to effectively use the services you are ordering, as well as to pay for the discounted charges for eligible services, we believe that you have not secured sufficient access to the resources outlined below. Compliance with this requirement to secure necessary resources, including computers, training, software, maintenance, and electrical connections, is one of the items to which you certified on your Form 471 application.

Budget: You did not demonstrate that you have secured the financial resources to pay your share and the estimated investments you reported for Hardware, Professional Development, Software, Retrofitting, and Maintenance.<sup>4</sup>

This explanation, like that in the Funding Commitment Reports, failed to identify for the District why the budget information it submitted was insufficient or what additional information it could have provided to demonstrate adequacy of its revenues to cover the non-discounted portions. This lack of reasoning by SLD is especially important in light of the fact that the District provided all information asked of it in the selective review and provided all information repeatedly identified in SLD documents as sufficient to demonstrate adequacy of funding. This information is discussed in further detail below.

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<sup>4</sup> Exhibit C.

On June 10, 2005, the District submitted its appeal of the funding commitment decisions to the Schools and Libraries Division. To the disadvantage of the District, it was appealing a decision that it did not and could not fully anticipate and oppose as the reasons for SLD's findings were never explained. Nonetheless, the District provided SLD with sufficient information to recognize that the denial of funding was in error because the District had approximately \$16,500,000 in secured state funds to cover its non-discounted E-rate obligations of \$142,562.

It was not until the Administrator's Decision on Appeal that SLD explained to the District the basis of its earlier conclusion that the District had not demonstrated adequacy of secure funding. With that basis it became clear that SLD fundamentally misunderstood the District's information and budget process. Importantly, SLD explained that the District had responded to numerous information requests and that these responses indicated that the District's secure funding to pay its non-discounted portion was limited to a single revenue source identified in the District's budget as "E-Rate Program." SLD then concluded that this revenue source was an unsecure, rather than secure, source because the District had further explained that this budget item was based on projected E-Rate reimbursements for current year (FY7) applications. SLD concluded that the "E-Rate Program" was the District's available revenue source when in fact the District had provided a draft, and then final, budget identifying \$16,500,000 in state funds as secure revenue.

SLD's misunderstanding of the District's funding and its available revenues then led it to erroneously dismiss application of SLD's own decision involving the Chatham

School District. It is the District's belief that the *Chatham* decision required a finding that the Lower Yukon School District had submitted sufficient information to meet its Item 25 certification obligations. SLD rejected application of the Chatham precedent because it concluded that during selective review, Lower Yukon had not identified state funds as a revenue source for the District's share of E-rate, an erroneous finding. SLD further erred in failing to consider the District's information regarding secure state funding, holding that "program rules do not permit the SLD to accept new information on appeal."

### III. FACTUAL BACKGROUND

#### A. The District's Applications and the Selective Review

The District's E-rate participating share for FY 2004-2005 was \$142,562. This was to be paid from over \$18,000,000 of state of Alaska public school funding. LYSD's Forms 471 described above for funding year 2004 were all submitted on either January 30, 2004, or February 1, 2004. SLD acknowledged receipt of all of those Forms 471 on February 9, 2004. The Form 471 Receipt Acknowledgement Letters state at page 1:

NOTE: Item 25 on the Form 471 is a certification that you have secured access to the resources necessary to pay for (1) the non-discount portion of the costs for eligible services within the funding year, as well as (2) the ineligible products and services to make effective use of the eligible services you have requested. **"Secure access" means that you can show that these funds are, or will be, part of your annual budget; or, if you are obtaining the funds from an outside revenue source, that these funds have been acquired or committed. IF YOU OBTAIN THESE FUNDS FROM AN OUTSIDE SOURCE, THE FUNDS MUST NOT COME DIRECTLY OR INDIRECTLY FROM YOUR SERVICE**

PROVIDER(S). YOUR SERVICE PROVIDER(S) MAY NOT WAIVE THE NON-DISCOUNT PORTION OF THE COSTS.<sup>5</sup>

The Item 25 certification does not require submission of supporting documents at the time of filing the Form 471 and there is no dispute that the District's Forms 471 were accepted by SLD. However, the FCC Form 471 Instructions do advise that SLD "may request additional documentation to support your certification."<sup>6</sup> Those instructions go on to state:

\* **Paying your share of E-rate eligible costs.** You may be asked to provide documentation of your ability to pay the non-discounted portion of the products and services for which you have applied for discounts. You should already have the funds identified in your budget to pay for these costs. If your budget is not yet final, we may request additional documentation to substantiate your certification.<sup>7</sup>

The District received an E-rate Selective Review Information Request dated April 22, 2004.<sup>8</sup> That request indicated the District was "to document the funds you have available to pay the discounted charges on eligible services." The form then identified what documents should be included to verify available funds: "relevant pages of your 2004-2005 operating or facilities budget; that is to say, the pages that document your ability to pay your share of the purchased products/services, and the pages that document your revenue." In addition:

Place an arrow next to each fund/budget line, on BOTH the revenue and expense side of your budget, showing where you have allocated the

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<sup>5</sup> Exhibit D (emphasis added).

<sup>6</sup> FCC Form 471 Instructions -- October 2003, p. 28.

<sup>7</sup> FCC Form 471 Instructions -- October 2003, p. 28.

<sup>8</sup> Exhibit E.



necessary dollars for your share of E-rate. Please write the specific amount that will come from each fund/budget line. For example, if budget line A0002 contains \$200,000 and \$100,000 will be used to pay your share of E-rate, then draw an arrow to it and write "E-rate, \$100,000."<sup>9</sup>

Finally, the "Selective Review Information Request Checklist" contained at the end of the Information Request identifies that the following be included with the District's response: "Approved operating budget which includes both revenues and expenses or alternative budget documentation."<sup>10</sup>

In response to this and follow-up requests for information during the Selective Review, the District provided a copy of the District's Board of Education minutes dated June 1, 2004, approving the District's FY '05 (July 1, 2004-June 30, 2005) budget, as well as relevant pages of the final budget.<sup>11</sup> In this document, the District had identified through an asterisk that it was including as a revenue source \$950,000 from the "E-Rate Program."<sup>12</sup>

When SLD subsequently asked the District if that \$950,000 was "a revenue from e-rate reimbursements?," the District responded "Yes, these are revenues from all e-rate reimbursements made during the school year." The District further identified that those revenues were projected to be received during the period July 1, 2004-June 30, 2005 – from the Funding Year 7 applications described above.<sup>13</sup> It was apparently this single

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<sup>9</sup> Exhibit E at p. 6.

<sup>10</sup> Exhibit E at p. 16.

<sup>11</sup> Exhibit F.

<sup>12</sup> Exhibit F at p. 3.

<sup>13</sup> Exhibit G.



piece of information that led SLD to conclude that the District had not met its certification obligation. As discussed above, this explanation was never provided to the District prior to SLD denying all funding requests. Indeed, the District would still be in the dark about the reason for funding denial had it not appealed SLD's decision and, in losing that appeal, received the reasons for the denial of funding in the first place.

The budget items provided to SLD during the Selective Review also showed that the District's total anticipated revenue for the period July 1, 2004-June 30, 2005, was \$26,950,000, with \$16,500,000 coming from "State Sources." That same budget document demonstrates how the District projected spending \$26,007,720 of the projected total revenue of \$26,950,000. It pointed out that the District's E-Rate participating share of \$142,562 was going to be expended out of Function 350 entitled "Support Services-Instruction." Also provided to SLD at that time was a more detailed breakdown of Function 350 "Support Services-Instruction." Under subfunction 450 entitled "Supplies, Materials, and Media," the District shows a full expenditure of \$185,330. That amount is the same amount as shown on Exhibit F, page 3 of 6 with the notation that out of that \$185,330, \$142,562 is the District's E-Rate participating share.

## **B. The Chatham School District Appeal**

The Lower Yukon School District's appeal is similar to an appeal by another Alaska School District, the Chatham School District.<sup>14</sup> As set forth in the Chatham

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<sup>14</sup> Chatham's appeal regarded its Form 471 Application Numbers 433751 and 433929, and funding request numbers 1207942, 1207943, 1207944, 1207945, and 1207946.





School District's Letter of Appeal dated December 2004, its applications were denied for the exact same reasons that LYSD's applications were denied, i.e.:

During application review, you were asked to demonstrate that when you filed your Form 471 you had secured access to the funds needed to pay your portion of the charges and you were unable to do so.<sup>15</sup>

SLD also sent the Chatham School District a separate letter similar to the separate letter sent to LYSD with the exact same explanation -- the Chatham District's budget did not demonstrate that it had secured the financial resources to pay its E-rate share.<sup>16</sup>

The Chatham School District's Appeal was granted by SLD.<sup>17</sup> The stated reason: "Your appeal has brought forward persuasive information that the funding request(s) cited above should be approved for funding." In its appeal, the Chatham School District assumed that SLD may not have understood how the State of Alaska's public school funding program operated. It is that funding program that is identified by LYSD as its "State Sources" on the District's budget documents submitted to SLD during the Selective Review.<sup>18</sup> As part of its appeal, the Chatham School District submitted a letter from Eddy Jeans, Director, Division of School Finance for the State of Alaska, Department of Education & Early Development, dated December 21, 2004.<sup>19</sup> As Mr.

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<sup>15</sup> Exhibit H at p. 1.

<sup>16</sup> Exhibit H at p. 1.

<sup>17</sup> Exhibit I.

<sup>18</sup> Exhibit F at pp. 3-6.

<sup>19</sup> Exhibit J.



Jeans stated in that letter, public school funding in Alaska “is funded on an annual basis by the Alaska legislature....”

### **C. The Certainty of LYSD’s State of Alaska School Funding**

The following information regarding the secure access to State of Alaska funding was provided to SLD in Lower Yukon’s appeal. However, as SLD’s decision made clear, it refused to consider this information, finding that it was new and was not submitted during the Selective Review. As explained in the Discussion section below, SLD’s refusal to consider this information was factually and legally in error.

As further indicated by Eddy Jeans in his letter, public school funding in the State of Alaska is based on the number of students being served by the District in the month of October. LYSD’s budget for the July 1, 2004-June 30, 2005 school year is prepared prior to the start of that school year. The final revenue figure from “State Sources” would not be known for certain until October 2005 when the number of students being served by the District are counted. However, as demonstrated by subsequent exhibits, the District’s projected revenues from “State Sources” is normally underestimated.

In LYSD’s Fiscal Year 2005 (July 1, 2004-June 30, 2005), because of an increase in public school funding by the Alaska legislature, the District’s actual Fiscal Year 2005 total entitlement from the State of Alaska was \$18,024,480 – well over the \$16,500,000 projected in the District’s budget.<sup>20</sup>

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<sup>20</sup> Exhibit K at p. 2.

Similarly, in LYSD's Fiscal Year 2004 (July 1, 2003-June 30, 2004), the District initially budgeted \$14,831,977 from the "State of Alaska," and actually received \$15,310,698.<sup>21</sup> In Fiscal Year 2003 (July 1, 2002-June 30, 2003), the District budgeted \$15,476,155 from the "State of Alaska," and actually received \$16,604,854.<sup>22</sup> And in LYSD's Fiscal Year 2002 (July 1, 2001-June 30, 2002), the District budgeted \$14,641,680 from the "State of Alaska," and actually received \$14,961,162.<sup>23</sup>

The above information, had it been considered, should have alleviated any concern by SLD as to whether or not the District had secure access to sufficient revenues to cover the \$142,562 of the District's E-rate share. The information presented to SLD clearly demonstrates that the District properly anticipated State of Alaska funding of at least \$16,500,000, and actually received over \$18,000,000 in such funding – ample funds to cover the \$142,562.<sup>24</sup>

#### IV. DISCUSSION

##### A. SLD Erred In Failing to Permit LYSD the Opportunity to Cure the Problems with the Originally Submitted Budgets

The FCC has recognized the right of SLD to review the accuracy of a billed entity's Form 471 Item 25 certification, finding that such a check ensures lawful

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<sup>21</sup> Exhibit L at p. 2.

<sup>22</sup> Exhibit M at p. 2.

<sup>23</sup> Exhibit N at p. 2.

<sup>24</sup> Even without consideration of the \$16,500,000 of "State Sources" identified in the District's final budget, the District's budget showed an unreserved, undesignated fund balance of \$1,030,720. Additionally, the District's budgeted revenue (not considering the unreserved fund balance) exceeded budgeted expenditures by \$942,280. Exhibit F at p. 3.

compliance and curbs waste, fraud, and abuse.<sup>25</sup> However, the Commission has further concluded that school districts should be given the opportunity to cure problems with their originally submitted budgets.

In *Beginning with Children Charter School*,<sup>26</sup> the Commission agreed with SLD that the entities' submitted budgets did not demonstrate that they had the ability to pay the full share of their non-discounted E-rate costs. Despite this, though, the FCC remanded to SLD "to allow the Applicants an opportunity to cure the problems with their originally submitted budgets."<sup>27</sup>

One of those applicants had facts very similar to the District. The applicant's budget had a line-item indicating where the \$63,000 of E-rate funds (the applicant's share) had been set aside. However, the applicant's revenues of \$4,535,480 included \$941,372 of funds "to be raised" which, consequently, were deemed to be nonsecure funds.<sup>28</sup> The Commission found that SLD should provide the applicant an opportunity to provide additional documentation to demonstrate compliance with the Item 25 certification. This was so because "only a portion of its overall budget relied on revenues

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<sup>25</sup> *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Jt. Bd. on Univ. Service, Changes to the Bd. of Dir. of the Nat'l Exchange Carrier Assoc., Inc.*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 423 (2000).

<sup>26</sup> *Request for Review of Beginning with Children Charter School, Federal-State Jt. Bd. on Universal Service, Changes to the Bd. of Dir. of the Nat'l Exchange Carrier Assoc.*, File No. SLD-256153, CC Docket Nos. 96-45 and 97-21, Order, FCC DA 03-245 (Wireline Com. Bureau 2003).

<sup>27</sup> *Id.* at 4, ¶ 7.

<sup>28</sup> *Id.* at 4-5, ¶ 8.

to be raised and it had in fact raised revenues in excess of the amount to be used to fund costs associated with the schools and libraries program.”<sup>29</sup>

The Commission recognized that SLD should continue to require proof of ability to pay and that it is not required to repeatedly contact applicants for new or clarifying information. Yet,

. . . Where an applicant has submitted a budget that does not adequately demonstrate ability to pay, however, we believe that providing an applicant an opportunity to address the problem will provide a better balance between the need for administrative efficiency and the interests of eligible schools and libraries in receiving discounts. We leave to SLD’s discretion whether further contacts should be made, considering such factors as whether the remaining problem is relatively simple or involves a small amount, the attempts made by SLD to resolve it previously, and the responses to previous inquiries.<sup>30</sup>

Here, Lower Yukon had a budget based upon \$16,500,000 of state funding, funding that SLD has already concluded in the *Chatham* appeal represents secure funding adequate to meet Item 25 certification. Of those millions, Lower Yukon was required to demonstrate that \$142,562 was available to pay the District’s E-rate portion. The “E-Rate Program” revenue item that SLD concluded was unsecured was a very small portion of the District’s overall budget. Additionally, the District responded on a timely basis to the information requests of SLD in its Selective Review.<sup>31</sup>

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<sup>29</sup> *Id.* at 5, ¶ 10.

<sup>30</sup> *Id.* at 5, ¶ 11.

<sup>31</sup> See *Request for Review of Children’s Store Front School, Federal-State Jt. Bd. on Universal Service, Changes to the Bd. of Dir. of the Nat’l Exchange Carrier Assoc.*, File No. SLD-254685, CC Docket Nos. 96-45 and 97-21, Order, FCC DA 03-382 (Wireline Comp. Bureau 2003) (concluding that the opportunity to cure set forth in *Beginning with*

Importantly, had SLD *ever* indicated during this review process that the E-rate Program funds were unsecure and therefore not a qualifying revenue source, the District would have timely responded by providing more detail regarding those revenue items that were secure, that were identified in the District's budget documents, and that would be used to cover the District's E-rate portion. Indeed, the FCC has required remand to SLD where the applicant provides all information requested, as occurred here, and SLD fails to specify what additional information is necessary to demonstrate eligibility for funding.<sup>32</sup>

At some point, common-sense must prevail. This truism was recognized by the Commission in *Beginning with Children Charter School* when it remanded back to SLD the applicant with a multi-million dollar budget, less than a million of which were unsecure funds. FCC directed SLD that the applicant be permitted an opportunity to address these unsecure funds "by such means as demonstrating that the anticipated funds have been secured, providing [that] alternate, secured sources for the funds are available,

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*Children Charter School* was not required where the applicant had wholly failed to respond to information inquiries of SLD).

<sup>32</sup> *Request for Review of Fayette County Sch. Dist., Schools and Libraries Universal Service Support Mechanism*, File No. SLD-338605, CC Docket No. 02-6, Order, FCC DA 05-2176 (Wireline Comp. Bureau 2005) ("To the extent that Fayette's response was not sufficient to demonstrate eligibility, SLD failed to specify what additional information was required. . . . We instruct SLD to provide Fayette with a detailed inquiry of the documents and information necessary for SLD to determine the eligibility of Fayette's funding request."); *see also Request for Review of St. Stanislaus Kostka Grade Sch., Federal-State Jt. Bd. on Universal Service, Changes to the Bd. of Dir. of the Nat'l Exchange Carrier Assoc.*, File No. SLD-142493, CC Docket Nos. 96-45 and 97-21, Order, FCC Rcd 3361 (Com. Car. Bureau 2001) (SLD failed to specify what additional information was required for an application for discounts).

or demonstrating that it is cutting expenses in the budget unconnected to its discounted service obligations to cover the shortfall.”<sup>33</sup>

SLD failed to provide this opportunity to the Lower Yukon School District. SLD could have utilized the District’s appeal as a means of assessing whether the District had provided sufficient information to demonstrate that the initial findings of SLD could be cured. Rather than doing this, though, SLD rejected all information from the District regarding its secure state funding. Thus, remand is necessary so that the District, now knowing the specifics of SLD’s denial, can demonstrate to SLD that it has secure funds to pay its E-rate share.

**B. SLD Erroneously Rejected the District’s Information Submitted on Appeal regarding the Security of State Revenues**

In its appeal to SLD, the District provided the State of Alaska funding information discussed above, as well as discussion regarding the Chatham appeal. In response, SLD ruled:

... On appeal, you state, “The District anticipated State of Alaska funding of at least \$16,500,000, and actually received over \$18,000,000 in such funding – ample funds to cover LYSD’s E-rate share of \$142,562.” However, during selective review, you never identified that you would use state funds to pay your share of E-rate. Program rules do not permit the SLD to accept new information on appeal except where an applicant was not given an opportunity to provide information during the initial review or an error was made by SLD. Furthermore, the Chatham School District’s appeal which you reference, was granted because the District stated during the selective review that the state funds would cover their share of expenses, which is not the case for Lower Yukon School District...<sup>34</sup>

<sup>33</sup> *Beginning with Children Charter School* at 5-6, ¶ 12.

<sup>34</sup> Exhibit A at pp. 3, 7, 11, 15, and 19, respectively.

SLD erred in applying a standard that “new information on appeal” cannot be accepted, a strict standard expressly rejected by this Commission. In *Request for Review by Shawano-Gresham Sch. Dist.*,<sup>35</sup> SLD denied the underlying appeal on the grounds that “[during] the appeals process we are unable to accept new information except under limited circumstances” and thus “[t]his funding request was correctly denied based on the original support documentation you have included with the Form 471.”<sup>36</sup>

The FCC found that SLD should have considered the new information and that the new information supported the district’s funding claim. First of all, the Commission explained that “new information may not be admitted on appeal to contradict earlier information, but it can be admitted to clarify an ambiguity in earlier information.”<sup>37</sup> Second, the FCC cited to SLD’s own appeal guidelines which state “that when ‘. . . funding is denied based on an incorrect assumption, the SLD will grant appeal when the appellant points out the incorrect assumption and provides documentation about the issue that is consistent with information originally provided but also successfully resolves the ambiguity in the original file.’”<sup>38</sup>

<sup>35</sup> *Request for Review of Shawano-Gresham Sch. Dist., Schools and Libraries Universal Service Support Mechanism*, File No. SLD-292913, CC Docket No. 02-06, Order, FCC DA 04-038 (Wireline Comp. Bureau 2004).

<sup>36</sup> *Id.* at 2.


<sup>37</sup> *Id.* (citing to *Request for Review of Pope Brach Elementary Sch., Federal-State Jt. Bd. on Universal Service, Changes to the Bd. of Directors of the Nat’l Exch. Carrier Assoc.*, File No. SLD-200168, CC Docket Nos. 95-46 and 97-21, Order 16 FCC Rcd 20205, 20207 (Com. Car. Bur. 2001).

<sup>38</sup> *Id.* at 2, citing to SLD website Appeal Guidelines and *Request for Review by Carrollton-Farmers Branch Indep. Sch. Dist., Federal-State Jt. Bd. on Universal Service, Changes to the Bd. of Directors of the Nat’l Exch. Carrier Assoc.*, File No. SLD-229384,



In assessing whether there was an ambiguity leading to the denial of funding, it cannot be overlooked that SLD *never* provided to the District its explanation as to why SLD believed the District could not meet its Item 25 certification obligations. When the District filed its appeal, it did not know the grounds for SLD's determination and thus the District provided all information it had to demonstrate that it did have secure funding to meet its non-discounted obligations. Moreover, at all times during the selective review, the District provided budget information that included the millions of dollars in state fund revenues.

The Chatham appeal represents the same situation, where the Chatham School District was required to provide a shot-gun approach on appeal to cover all issues that *may* have been relevant to SLD's determination.<sup>39</sup> In Chatham, SLD had provided the exact same blanket reasons for denial as provided to Lower Yukon, with no explanation of why either school district, respectively, had failed to demonstrate secure access to funds. Chatham concluded its letter of appeal with the following plea: "If the SLD denies this application, we ask the SLD to provide more specific information on the perceived shortfall in Chatham's funding position."<sup>40</sup>

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CC Docket Nos. 95-46 and 97-21, Order, 17 FCC Rcd 16067, 16070 (Wireline Comp. Bur. 2002).

<sup>39</sup> Exhibit H, Letter of Appeal, Chatham School District, December 2004, p. 2 ("It is unclear from the SLD's supplementary letter of December 3, 2004, exactly how Chatham had failed to demonstrate that it had not secured adequate funds. There appear to be several possible explanations, each of which is discussed below . . .").

<sup>40</sup> Exhibit H at p. 4.

Ironically, even though Chatham's appeal was granted, SLD still failed to explain why it was granted or why it was denied in the first place, concluding only that "Your appeal has brought forward persuasive information that the funding request(s) cited above should be approved for funding." Chatham had, in fact, provided numerous reasons in support of its appeal. It was only in SLD's denial of *Lower Yukon's* appeal that SLD explained that Chatham's appeal "was granted because the District stated during the selective review that the state funds would cover their share of expenses."<sup>41</sup>

The Commission has held that remand to SLD is appropriate when SLD's determinations lack specificity. For example, in *Request for Review by Marshall County Sch. Dist.*,<sup>42</sup> SLD, pursuant to a PIA review, asked for information to support a funding request for paging services. The district timely responded by submitting a copy of a bill. SLD then denied the funding request without providing specific reasons. As the Commission recognized, the record "does not reveal the facts and reasoning on which SLD's determination is based with clarity, e.g., whether it disregarded the monthly bill information, or found that it did not support the request. A remand on the appeal will provide SLD a chance to elaborate on its reasoning and to review and address the argument made by applicant." The Commission concluded that remand would aid both

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<sup>41</sup> Exhibit A at pp. 3, 7, 11, 15, and 19, respectively.

<sup>42</sup> *Request for Review of Marshall County Sch. Dist., Federal-State Jt. Bd. on Univ. Service, Changes to the Bd. of Dir. of the Nat'l Exch. Carrier Assoc.*, File No. SLD-220105, CC Docket Nos. 96-45 and 97-21, Order DA 03-764 (Wireline Comp. Bureau 2003).

the applicant and the Commission should the FCC then be asked to again review SLD's decision after remand.<sup>43</sup>

## V. CONCLUSION

SLD's decision to deny funding was fraught with errors. Ultimately, though, the question is whether the Lower Yukon School District can demonstrate that it has secure access to the non-discounted portions of its FY 2004-2005 funding requests. It is entitled to the opportunity to make that demonstration and this entitlement can only be fairly exercised when the District is informed with specifics regarding SLD's reasons for rejecting the budget figures provided. A remand is therefore appropriate with direction that SLD consider the information from the District regarding its secure access to millions of dollars in state funds. Alternatively, the FCC can review the information before it and remand simply with a direction that funding for FY 2004-05 be approved in light of SLD's decision in *Chatham*.<sup>44</sup>

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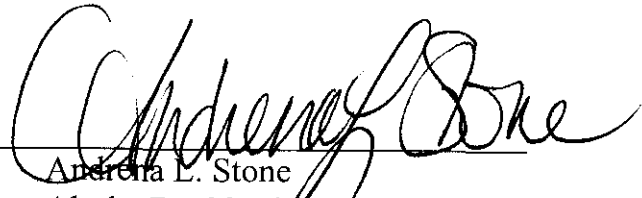
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<sup>43</sup> *Id.* at 4.

<sup>44</sup> See *Requests for Review of Berkeley County Sch. Dist., et al, School and Libraries Universal Support Mechanism*, File No. SLD-338662, *et al.*, CC Docket No. 02-6, FCC Order, DA 05-326 (Wireline Comp. Bureau 2005) (granting request for review in cases factually similar to precedent and remanding to SLD to take appropriate action consistent with precedential decision); *Requests for Review of Greenbrier County Sch. District, et al., School and Libraries Univ. Service Support Mechanism*, File No. SLD-338660, *et al.*, CC Docket No. 02-6, FCC Order, DA 05-1123 (Wireline Comp. Bureau 2005) (same).

DATED at Anchorage, Alaska this 23<sup>rd</sup> day of November, 2005.

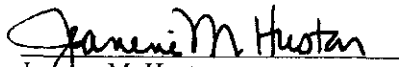
JERMAIN DUNNAGAN & OWENS, P.C.


By:   
Andrena L. Stone  
Alaska Bar No. 9411127

CERTIFICATE OF SERVICE

This is to certify that on this 23<sup>rd</sup> day of  
November, 2005, a true and correct copy of  
the foregoing was mailed, postage pre-paid, to:

Letter of Appeal  
Schools and Libraries Division  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

  
Jeanne M. Huston

LAW OFFICES OF  
JERMAIN DUNNAGAN & OWENS  
A PROFESSIONAL CORPORATION  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322  


## REQUEST FOR REVIEW EXHIBIT LIST

CC Docket No. 02-6

**Re: Applicant Name:** LOWER YUKON  
SCHOOL DISTRICT  
**Billed Entity No.:** 145592  
**Funding Year 2004:** 07/01/2004-06/30/2005  
**Form 471 Application Nos.:** 416962, 417124, 417177,  
417226, 418655

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- Exhibit A September 27, 2005 Administrator's Decision on Appeal – Funding Year 2004-2005 – Application Nos. 416962, 417124, 417177, 417226, 418655
- Exhibit B April 19, 2005 Funding Commitment Decision Letter (Funding Year 2004: 07/01/2004 – 06/30/2005) – Application Nos. 416962, 417124, 417177, 417226, 418655
- Exhibit C April 19, 2005 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lower Yukon School District re: FCC Form 471 Application Number(s): 416962, 417124, 417177, 417226, 418655
- Exhibit D February 9, 2004 Form 471 Receipt Acknowledgement Letter (Funding Year 2004: 07/01/2004 – 06/30/2005) – Application Nos. 416962, 417124, 417177, 417226, 418655
- Exhibit E USAC E-Rate Selective Review Information Request Funding Year 2004 – Case # SR-2004-145592 – Form 417 Application Nos. 416962, 417124, 417177, 417226, 418655
- Exhibit F June 1, 2004 Regular Board Minutes Approving Budget and attached budget
- Exhibit G March 14, 2005 letter from Schools and Libraries Division, Universal Service Administrative Company, to Lower Yukon School District re: Funding year 2004 E-Rate
- Exhibit H December 2004 letter from Winston E. Himsworth, E-Rate Central to Schools and Libraries Division re: Chatham School District, Form 471 Application Numbers: 433751 & 433929

- Exhibit I      Mayr 27, 2005 letter from Schools and Libraries Division, Universal Service Administrative Company, to Winston E. Himsworth, E-Rate Central, re: Chatham School District, Form 471 Application Number 433751
- Exhibit J      December 21, 2004 letter from State of Alaska, Department of Education and Early Development, Division of School Finance, to To Whom It May Concern
- Exhibit K      March 15, 2005 Memo from Eddy Jeans, Director, State of Alaska, Department of Education and Early Development, Division of School Finance, to Superintendents, School District Business Managers, r: FY 2005 FINAL Foundation Report
- Exhibit L      Lower Yukon School District Statement of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual – General (School Operating) Fund Year Ended June 30, 2004
- Exhibit M      Lower Yukon School District Statement of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual – General (School Operating) Fund Year Ended June 30, 2003
- Exhibit N      Lower Yukon School District Combined Statement of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual –School Operating Fund and Special Revenue Funds Year Ended June 30, 2002

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JLG  
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Saul R. Friedman, Esq.  
Jermain, Dunnagan & Owens, P.C.  
3000 A Street, Suite 300  
Anchorage, AK 99503

Billed Entity Number: 145592  
Form 471 Application Number: 416962  
Form 486 Application Number:





Universal Service Administrative Company  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2004-2005**

September 27, 2005

Saul R. Friedman, Esq.  
Jermain, Dunnagan & Owens, P.C.  
3000 A Street, Suite 300  
Anchorage, AK 99503

Re: Applicant Name: LOWER YUKON SCHOOL DISTRICT  
Billed Entity Number: 145592  
Form 471 Application Number: 416962  
Funding Request Number(s): 1147061, 1147086  
Your Correspondence Received: June 15, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2004 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1147061, 1147086  
Decision on Appeal: **Denied**  
Explanation:

- On appeal, you assert that the District provided a copy of the Board minutes approving the District's FY2004-05 budget, which demonstrates that the projected revenue of \$950,000 from FY7 E-Rate reimbursements was included as a revenue source. The District's total revenue was \$26,950,000, with \$16,500,000 coming from "State Sources". You state that the revenues from the E-Rate Program were projected to be only approximately 3.5% of the total revenues. You further state that your E-Rate share of \$142,562 was budgeted under "Support Services - Instruction", and the District also demonstrated that the revenue from the "E-Rate Program" would be fully expanded under "Utility Services". In addition, you indicate that the Lower Yukon School District's appeal is similar to an appeal submitted by another Alaska school district, the Chatham School District, whose applications were denied by the SLD for the exact same reasons. In their appeal,